

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 98-0002  
)  
KENNETH M. DUFFUS, ) DECISION  
Appellant )  
\_\_\_\_\_ ) May 5, 1999

STATEMENT OF THE CASE

Appellant Kenneth M. Duffus filed a timely appeal of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Program<sup>1</sup> [RAM] on January 16, 1998. His request for additional qualifying pounds of halibut quota share [QS] under the Individual Fishing Quota [IFQ] program, based on halibut landings made from the F/V ENTERPRISE II during 1986, was denied because the evidence did not show that he was qualified for QS. Mr. Duffus' interests are directly and adversely affected by the IAD. No hearing was ordered because the record contains sufficient information on which to reach a final decision, and because there is no genuine and substantial issue of adjudicative fact for resolution.<sup>2</sup>

ISSUE

Does Mr. Duffus qualify as an individual for QS, based on landings of halibut made from the F/V ENTERPRISE II during 1986?

BACKGROUND

Mr. Duffus applied for QS based on his ownership of the F/V ENTERPRISE II between 1986 and 1990. RAM's records show that legal halibut landings were made from the vessel during that period. D&G Enterprises, Inc. [D&G] also applied for QS on grounds it had leased the vessel from Mr. Duffus between 1987 and 1990. Mr. Duffus was a 50% shareholder of D&G during that time. RAM determined that D&G leased the vessel between 1987 and 1990. RAM allocated the qualifying pounds of halibut landed from the vessel during the lease to D&G, but suspended issuance of QS pending the exhaustion of Mr. Duffus' administrative appeal rights.

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<sup>1</sup>The Restricted Access Management Division was renamed Restricted Access Management Program, effective September 28, 1997. [NOAA Circular 97-09, 19 Sep 97].

<sup>2</sup>*See*, 50 C.F.R. § 679.43(g)(2) and (3); formerly, 50 C.F.R. § 676.25(g)(2) and (3). All IFQ regulations were renumbered, effective July 1, 1996. *See*, 61 Fed. Reg. 31,270 (1996). The wording of the regulation in question was unchanged by the renumbering.

In Duffus v. D&G Enterprises, Inc.,<sup>3</sup> we upheld RAM's determination that Mr. Duffus had leased the vessel to D&G between 1987 and 1990. The ruling did not address whether QS should be issued to Mr. Duffus, based on halibut landings made from the vessel in 1986.

In a second IAD, dated January 16, 1998, RAM denied Mr. Duffus' claim for QS based on his 1986 landings, on grounds that as an individual he was not a "qualified person" for QS under the regulations of the IFQ program. On appeal, Mr. Duffus claims that he should have received IFQ credit and QS based on the halibut landings made from the F/V ENTERPRISE II in 1986.

## DISCUSSION

To be considered a "qualified person" for QS under the regulations of the IFQ program, an applicant must have owned or leased a fishing vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year.<sup>4</sup> A QS qualifying year is 1988, 1989, or 1990.<sup>5</sup> A "person" is a citizen of the United States, or a corporation, partnership, association, or other entity.<sup>6</sup> A person who owns a vessel cannot be a qualified person based on legal landings of halibut or sablefish made by a person who leased the vessel for the duration of the lease.<sup>7</sup>

Mr. Duffus requests IFQ credit and QS based on qualifying pounds of halibut landed from the F/V ENTERPRISE II in 1986, before he became a half owner of D&G. The record shows that during the entire qualifying period (1988-1990) the vessel was leased to D&G. Mr. Duffus made no other halibut landings as an individual between 1988 - 1990 from a vessel that he owned or leased. Under the IFQ regulations, D&G is a separate legal entity or person from Mr. Duffus. Consequently, although Mr. Duffus was part owner of D&G, which is a qualified person, he does not meet the definition of "qualified person" as an individual.

Therefore, because Mr. Duffus as an individual is not a qualified person for QS, he cannot receive IFQ credit or QS based on the landings made from the F/V ENTERPRISE II in 1986.

## FINDINGS OF FACT

1. During the entire qualifying period (1988-1990) the F/V ENTERPRISE II was leased to D&G.

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<sup>3</sup>Appeal No. 95-0102, October 15, 1997.

<sup>4</sup>See, 50 C.F.R. § 679.40(a)(2).

<sup>5</sup>See, 50 C.F.R. § 679.40(a)(3).

<sup>6</sup>See, 50 C.F.R. § 679.2.

<sup>7</sup>See, 50 C.F.R. § 679.40(a)(2)(i)(B).

2. D&G is a separate legal entity or person from Mr. Duffus.
3. Mr. Duffus made no other halibut landings as an individual between 1988 - 1990 from a vessel that he owned or leased.

#### CONCLUSIONS OF LAW

1. Although Mr. Duffus was part owner of D&G, which is a qualified person, he does not meet the definition of “qualified person” as an individual.
2. Mr. Duffus cannot receive additional IFQ credit or QS based on landings of halibut in 1986 because as an individual he is not a qualified person for QS.

#### DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect June 4, 1999, unless by that date the Regional Administrator orders review of the Decision. Any party, including RAM, may submit a Motion for Reconsideration, but it must be received at this Office not later than 4:30 p.m., Alaska Time, on May 17, 1999, the tenth day after the date of this Decision. A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement or Points and Authorities in support of the motion.

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Randall J. Moen  
Appeals Officer